

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GREG BARSTOW</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 206,871
<b>A. D. JACOBSON CO., INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>BUILDERS' ASSN. SELF-INSURERS' FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appealed the Award entered by Administrative Law Judge Robert H. Foerschler dated July 17, 1997. The Appeals Board heard oral argument on January 20, 1998, in Kansas City, Kansas.

**APPEARANCES**

Claimant appeared by his attorney, Keith L. Mark of Mission, Kansas. Respondent and its insurance carrier appeared by their attorney, Gregory D. Worth appearing for Dana D. Arth of Lenexa, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Administrative Law Judge's Award.

**ISSUES**

The only issue before the Appeals Board is whether claimant served the respondent with a timely written claim for compensation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge awarded claimant permanent partial general disability benefits in the amount of 3.5 percent based on a 3.5 percent permanent functional impairment rating stipulated to by the parties. Work disability was not an issue.

The only dispute in this case is whether the claimant served a timely written claim for compensation benefits upon the respondent as required by K.S.A. 44-520a. The parties stipulated that the respondent filed a report of accident within 28 days after claimant's accident as required by K.S.A. 44-557(a). Therefore, claimant had 200 days from the date of accident or the date of last payment of compensation to serve a written claim for compensation upon the respondent.

The Administrative Law Judge concluded that the evidentiary record proved claimant satisfied the requirement of K.S.A. 44-520a by making a written claim for compensation through Val L. Wilson, Jr., respondent's superintendent on the jobsite where claimant was injured on October 25, 1993. The Appeals Board agrees with the Administrative Law Judge's conclusion.

Claimant testified in person before the Administrative Law Judge at the regular hearing held on April 8, 1997. Claimant testified he notified his foreman, Mike Carpenter, immediately after he hurt his back lifting some pipe on October 25, 1993. Then, within two to three days following the injury, claimant testified he filled out and signed an accident report provided by the respondent. Claimant testified that the accident report was completed in the office of respondent's superintendent, Val Wilson, located in a trailer on the jobsite where he was injured. Claimant further testified he was told by Mr. Wilson, after claimant completed the accident report, that Mr. Wilson would notify the respondent that claimant was making a workers compensation claim. Claimant testified he kept a copy of the accident report but lost the copy when his wife threw it away after they were separated during their divorce proceeding.

Claimant testified, and the medical records admitted into evidence at Val Wilson's deposition verified, the respondent provided claimant with medical treatment for his low-back injury through Carl A. Foster, M.D., of Occupational Medicine Associates of Kansas City, Missouri. Claimant was treated by Dr. Foster from November 2, 1993, through December 3, 1993. Claimant was released for light duty work on November 2, 1993, and regular work without restrictions on December 3, 1993.

Mr. Wilson testified by deposition on May 27, 1997. Mr. Wilson's testimony differed from claimant's concerning the particulars of how claimant reported the October 25, 1993, accident. Mr. Wilson testified claimant notified him on October 26, 1993, that the reason

he was not at work was because he was down in the back. Mr. Wilson testified that claimant said he did not want to report the back injury, at that time, because he had a previous back injury and wanted to wait and see if it improved on its own. Mr. Wilson testified that he recorded what claimant had told him during the telephone conversation in his logbook that he maintained at the jobsite. The purpose of the logbook was to record everything that happened on a daily basis at the jobsite.

Mr. Wilson could not specifically recall whether or not the claimant ever filled out an accident report. Mr. Wilson testified it was not customary for injured workers to fill out their own accident report. Nevertheless, if an injured worker would have presented a claim to Mr. Wilson, he testified he would have forwarded the claim to the respondent's office. Mr. Wilson further admitted he knew claimant had received medical treatment authorized by the respondent for his low-back injury. Mr. Wilson also verified that the claimant was honest and truthful and to his knowledge he had never made a false statement to the respondent.

Jennifer Bowen, a secretary employed by the respondent, who on the date of claimant's injury, October 25, 1993, was responsible for the filing of workers compensation claims testified by deposition. Ms. Bowen testified she had prepared on November 4, 1993, the Employer's Report of Accident that reported to the Division of Workers Compensation the accident involving the claimant. A copy of this report was admitted into evidence at Mr. Wilson's deposition without objection. Ms. Bowen also identified other documents contained in Mr. Wilson's deposition Exhibit 1 as all of the documents she had in her file in reference to claimant's work-related accident. Although Ms. Bowen did not have a copy of the accident report claimant testified he completed, Ms. Bowen conceded she could have received such a report and forwarded the report to the insurance carrier.

The Appeals Board finds it is significant in this case that the claimant testified in person before the Administrative Law Judge. Thus, the Administrative Law Judge had the opportunity to assess claimant's credibility. In finding that claimant timely served a written claim upon the respondent for compensation, the Administrative Law Judge had to find the claimant's testimony credible. Furthermore, the Appeals Board finds claimant's contention that he completed an accident report a few days following the accident is supported by the fact that Ms. Bowen, on November 4, 1993, had all the necessary information to complete the Employer's Report of Accident required to be filed with the Division of Workers Compensation. The information contained in Mr. Wilson's logbook in reference to claimant's accident did not provide the necessary facts needed for the Employer's Report of Accident. The Appeals Board finds the record as a whole proves claimant completed an accident report which constituted a written claim for compensation. Therefore, giving some deference to the conclusions of the Administrative Law Judge, the Appeals Board finds that claimant served a timely written claim for compensation on the respondent as required by K.S.A. 44-520a.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated July 17, 1997, should be, and is hereby, affirmed in all respects.

The Appeals Board also approves and adopts all other orders in the Administrative Law Judge's Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Keith L. Mark, Mission, KS  
Dana D. Arth, Lenexa, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director